

Item No. 8
16.08.2023
Court. No. 19
GB

C.O. 3876 of 2022

Sri Raj Krishna Saha & Anr.
Vs.
Smt. Kalpana Sarkar & Anr.

*Mr. Bibek Chatterjee,
Mr. Tanmoy Chakraborty,
Ms. Paramita Sahu,
Ms. Susmita Saha*

...for the Petitioners.

*Mr. Rohit Das,
Ms. Kishwar Rahman,
Mr. S. B. Dasgupta,
Mr. Indradip Das,
Mr. Preetam Majumdar*

...for the Opposite Parties.

The petitioners are aggrieved by an order dated November 16, 2022, passed by the learned Civil Judge (Senior Division), 3rd Court at Barasat, District-24 Parganas (North) in Title Suit No.482 of 2022.

By the order impugned, an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure was rejected on merits. The learned court came to a finding that the materials available from both sides indicated an existing conflict between the parties which had resulted in a series of police complaints and criminal cases. Taking into account the nature of dispute and the alternative claim of recovery of money which the plaintiffs had prayed for, the court found that the dispute was triable.

The suit was filed for specific performance of contract and the plaintiffs did not indicate from when and in what manner they had got possession of the property although

there were some instances of transactions which had taken place, as mentioned in the plaint.

The claim of possession of the plaintiffs in respect of the suit property and wilful delivery of the same by the defendants in favour of the plaintiffs, were not accepted.

On the above grounds, the application for temporary injunction was rejected on contest. The learned court below went through the documents filed by the parties, considered the case and counter-case of the parties and the fact that the defendants had also filed a counter-claim. The court held that the balance of convenience and inconvenience, did not warrant any order of temporary injunction. The learned court below rejected the application.

The order impugned is an appealable order. The learned court below entered into the merits, considered the documents and passed necessary orders. This is not a case in which, this Court should invoke powers under Article 227 of the Constitution of India. The order impugned does not suffer from lack of jurisdiction, lack of consideration of evidence and there is no error apparent on the face of record. The merits of the orders has to be tested in an appeal. Alternative remedy is a bar.

Accordingly, the revisional application is dismissed.

This order shall not prevent the plaintiffs from approaching the appropriate forum in accordance with law.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)